



POLICY NUMBER: 4 7041811
RENEWAL OF: 4 7034494

ITEM 1.
Named
Insured
Address
(Street,
Town,
State)

ABAG PLAN CORPORATION, ET AL
P.O. BOX 2050
OAKLAND, CA 94604-2050

SPECIAL EXCESS LIABILITY POLICY FOR PUBLIC ENTITIES DECLARATIONS

This Declarations Page and attached schedule(s), and all terms and conditions complete this insurance Policy.

ITEM 2.

POLICY FROM: July 1, 2004 **TO:** July 1, 2005 **AT 12:01 A.M.**
PERIOD STANDARD TIME AT THE ADDRESS OF THE NAMED INSURED SHOWN ABOVE

ITEM 3.

LIMITS OF INSURANCE:

The Limits of Insurance, subject to all the terms and conditions of this Policy are:

A. Limits of Insurance

1. Aggregate Limits

- | | |
|----------------|--|
| a. \$5,000,000 | Products-Completed Operations Hazard Aggregate |
| b. \$5,000,000 | Errors and Omissions Liability Aggregate, other than personal injury offense wrongful acts |
| c. \$5,000,000 | Employee Benefit Liability Aggregate |

2. Per Occurrence or Wrongful
Act or Employee Benefit
Wrongful Act Limit

\$5,000,000	Any one occurrence or wrongful act or employee benefit wrongful act or series of continuous, repeated, or related occurrences or wrongful acts or employee benefit wrongful acts.
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B. Retained Limit

\$5,000,000	Any one occurrence or wrongful act or employee benefit wrongful act or series of continuous, repeated, or related occurrences or wrongful acts or employee benefit wrongful acts.
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ITEM 4.

ENDORSEMENTS APPLICABLE TO THIS POLICY ON THE ORIGINAL DATE OF ISSUE:

<u>Title</u>	<u>Number</u>
See attached schedule	See attached schedule

ITEM 5.	PREMIUM COMPUTATION:		
	<u>ESTIMATED EXPOSURE</u>	<u>RATE / PER</u>	<u>AUDIT PERIOD</u>
	895,065	\$0.581700 PER POPULATION	Yearly
	<u>ADVANCED PREMIUM</u>	<u>MINIMUM PREMIUM</u>	<u>MINIMUM EARNED PREMIUM</u>
	\$520,700.00	\$520,700.00	\$130,175.00
	Taxes: N/A Surcharges: N/A		
	The premium computation is for the stated audit period, unless an Installment schedule is attached to this insurance Policy; such premium may be subject to adjustment.		
ITEM 6.	RETAINED LIMIT CLAIMS SERVICING ORGANIZATION:	SELF ADMINISTERED P. O. BOX 2050 OAKLAND, CALIFORNIA 94604-2050	

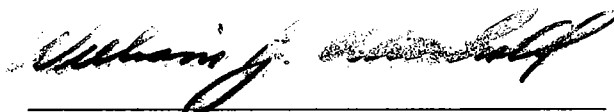
This Policy is not valid unless countersigned by a duly authorized agent of the Company.

Producer:
(Name and
Address)

DRIVER ALLIANT INSURANCE SERVICES, INC
500 WASHINGTON ST., #300
SAN FRANCISCO, CA 94111-2933

Date of Issue: 07/22/2004

Countersigned By:



Authorized Representative

SPECIAL EXCESS LIABILITY POLICY FOR PUBLIC ENTITIES

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SPECIAL EXCESS LIABILITY POLICY FOR PUBLIC ENTITIES

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties, and what is and is not covered.

Throughout this Policy the words **you** and **your** refer to the **Named Insured(s)** shown in the Declarations and any other person(s) or organization(s) qualifying as an **insured** under this Policy. The words **we**, **us**, and **our** refer to the Company providing this insurance.

Other words and phrases that appear in boldface have special meaning. Refer to SECTION II. **DEFINITIONS**.

In consideration of the payment of the premium and in reliance upon the statements in the Declarations, we agree to provide as follows:

SECTION I. WHAT WE SHALL PAY ON YOUR BEHALF

A. INSURING AGREEMENTS

1. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

We shall pay **you**, or on **your** behalf, the **ultimate net loss**, in excess of the **retained limit**, that the **insured** becomes legally obligated to pay by reason of liability imposed by law or assumed under an **insured contract** because of **bodily injury or property damage** arising out of an **occurrence** during the Policy Period.

2. ERRORS AND OMISSIONS LIABILITY

We shall pay **you**, or on **your** behalf, the **ultimate net loss**, in excess of the **retained limit**, that the **insured** becomes legally obligated to pay to compensate others for loss arising out of **your wrongful act** that takes place during the Policy Period and arises solely in performing or failing to perform duties of the **public entity**.

3. EMPLOYEE BENEFIT LIABILITY

We shall pay **you**, or on **your** behalf, the **ultimate net loss**, in excess of the **retained limit**, that the **insured** becomes legally obligated to compensate others for loss arising out of **your employee benefit wrongful act** that takes place during the Policy Period, in the **administration of your employee benefit program**.

B. DEFENSE AND DEFENSE COSTS

1. We shall have the right and duty to defend, investigate and settle any **claim or suit** seeking damages covered by the terms and conditions of this Policy when the applicable limits of insurance of the **underlying insurance** listed in the Schedule of **Underlying Insurance**, the limits of insurance of any other **underlying insurance** providing coverage to **you**, or **your self insured retention** of the **retained limit** have been

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exhausted by payment to a third party of judgments, settlements, or defense costs, or by payment of covered first party automobile expenses.

2. When we assume the defense of any claim or suit:
 - a. We will defend any claim or suit against you seeking damages under this Policy even if such claim or suit is groundless, false, or fraudulent, but we have the right to investigate, defend, and settle the claim or suit as we deem necessary.
 - b. We will pay the following, to the extent that they are not included in the underlying insurance listed in the Schedule of Underlying Insurance, self insured retention of the retained limit or in any other insurance providing coverage to you:
 - i. Premiums on bonds to release attachments for amounts not exceeding our Limits of Insurance, but we are not obligated to apply for or furnish any such bond;
 - ii. Premiums on appeal bonds required by law to appeal any claim or suit we defend, but we are not obligated to apply for or furnish any such bond;
 - iii. All costs taxed against you in any claim or suit we defend;
 - iv. Pre-judgment interest awarded against you on that part of the judgment we pay. If we make an offer to pay the applicable Limit(s) of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer;
 - v. All interest that accrues after entry of judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our applicable Limit(s) of Insurance; or
 - vi. Your expenses incurred with our consent or at our request.
3. We will not defend any suit or claim after our applicable Limit(s) of Insurance has been exhausted by payment of judgments, settlements, or defense costs.
4. All expenses we incur in the defense of any suit or claim are included within the Limits of Insurance, except for salaries of our employees, our office expenses, and any expenses of any claims or suit by the servicing organization we have engaged.
5. In all other instances except 1. above, we will not be obligated to assume charge of the investigation, settlement or defense of any claim made, suit brought or proceeding instituted against you. We will, however, have the right and shall be given the opportunity to participate in the defense and trial of any claims, suit or proceedings relative to any occurrence, wrongful act or employee benefit wrongful act, which in

our opinion, may create liability for us under the terms and conditions of this Policy. If we exercise such right, we will do so at our own expense.

6. If allegations of wrongful acts solely as respect to employment practice liability are not subsequently proven after a trial by a final judgment or other adjudication adverse to you or if there is a dismissal of the claim or suit before a trial, we will reimburse you reimburse you up to fifty percent (50%) of reasonable defense costs you incur, subject to a maximum amount of \$250,000. However, reimbursement of such defense costs will not be made by us to you if there is any kind of settlement with a third party.

SECTION II. DEFINITIONS

A. Administration means:

1. Counseling employees, including their dependents and beneficiaries, with respect to the employee benefit program;
2. Handling records in connection with the employee benefit program; and/or
3. Effecting or terminating any employee's participation in a plan included in the employee benefit program.

B. Automobile means a land motor vehicle, trailer or semi-trailer; or, such land motor vehicles used in a transit or public transportation system operating over non-fixed routes as provided in the exception provisions of Exclusion DD.

C. Bodily Injury means bodily harm, sickness, disability or disease. Bodily injury shall also mean mental injury, mental anguish, humiliation, shock or death if resulting directly from bodily injury, sickness, disability or disease. Bodily injury shall include care and loss of services resulting at any time resulting from the bodily injury of any person or persons.

D. Claim(s) means a demand for money.

E. Covered first party automobile expenses means the minimal legally mandated automobile personal injury protection (PIP) expenses and/or uninsured/underinsured motorists benefits.

F. Dam means any artificial barrier, together with appurtenant works, which does or may impound or divert water.

G. Employee includes a leased worker or a volunteer while acting within the scope of his/her duties as such.

H. Employee benefit program includes any employee benefit plan involving, but not limited to, the following:

Group life insurance, group accident or health insurance, profit sharing plans, pension plans and stock subscription plans provided that no one other than an employee may subscribe to such insurance or plans, unemployment insurance, social security benefits, workers' compensation and disability benefits.

- I. **Employee benefit wrongful act** means any actual or alleged negligent act, error, or omission in the administration of the employee benefit program.
- J. **Employment practice liability** shall mean any actual or alleged negligent error or omission resulting in loss to:
1. A person arising out of any:
 - a. Refusal to employ that person;
 - b. Termination of that person's employment; or
 - c. Employment related practices, policies, acts or omission, including, but not limited to, coercion, demotion, evaluation, **retaliation**, reassignment, discipline, defamation, harassment, failure to promote, humiliation, discrimination; or acts or omissions as described in 1.c. herein directed at a **whistle-blower**; or
 2. The spouse, child, parent, brother or sister of that person as a consequence of loss to that person to whom any of the employment-related practices described in paragraphs 1.a., 1.b., or 1.c. above apply.

This coverage applies:

- a. Whether you may be liable as an employer or in any other capacity; and
 - b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- K. **First aid** means the immediate and emergency care given to an ill or injured person before regular medical aid can be obtained.
- L. **Hired automobile** means an automobile used under contract on your behalf or loaned to you, provided such automobile is not owned by you or registered in your name or in the name of any of your employees or servants.
- M. **Hostile fire** means a fire that becomes uncontrollable or breaks out from where it was intended to be.
- N. **Insured contract** means:
1. A contract for a lease of premises including but not limited to premises rented or loaned to you;
 2. A sidetrack agreement;

3. Any easement or license agreement;
4. An obligation, as required by ordinance;
5. An elevator maintenance agreement;
6. That part of any other contract or agreement pertaining to **your** business under which you assume the tort liability of another party to pay for **bodily injury** or for **property damage**, or for a **wrongful act** from a **personal injury offense** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or

An **insured contract** does not include that part of any contract or agreement:

That indemnifies an architect, engineer, or surveyor, his agents or **employees**, for injury or damage arising out of:

- a. Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; or
 - b. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
- O. Joint powers authority(ies)** means two (2) or more public agencies joined together by a joint agreement in order to jointly exercise any power common to the contracting parties, including, but not limited to the power to create risk pooling and joint purchase of private insurance.
- P. Land subsidence** means the movement of land or earth, including, but not limited to, sinking or settling of land, earth movement, earth expansion and/or contraction, landslide, slipping, falling away, caving in, eroding, earth sinking, and earth rising or shifting or tilting.
- Q. Leased worker** means a person leased to **you** by a labor leasing firm under an agreement between **you** and the labor leasing firm, to perform duties related to the conduct of **your** business.
- R. Loading or unloading** means the handling of property:
1. While it is in or on an aircraft; or
 2. While it is being moved from an aircraft to the place where it is finally delivered.
- But **loading or unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft.
- S. Municipality** means a legally incorporated or duly authorized association of inhabitants of a limited area limited to the following: city, town, county, village, township, borough, hamlet, burgh, or state.
- T. Nuclear facility** means:

1. Any nuclear reactor;
 2. Any equipment or device or used for:
 - a. Separating the isotopes of uranium or plutonium,
 - b. Processing or utilizing **spent fuel**, or
 - c. Handling, processing or packaging nuclear **waste**;
 3. Any equipment or device used for the processing, fabricating, or alloying of **special nuclear material** if at any time the total amount of such material in **your** custody at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233, or any combination thereof, or more than 250 grams of uranium 235;
 4. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of nuclear **waste**; or
 5. The site on which 1. and 2. above are located, all operations conducted on those sites, and all premises used for such operations.
- U. Nuclear material means source material, special nuclear material or by-product material.**
- V. Nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.**
- W. Occurrence means an accident, including continuous, repeated, or related exposure to substantially the same general harmful conditions, which results in **bodily injury** or **property damage** neither expected or intended from **your** standpoint.**
- X. Owned automobile means an automobile owned by **you** or under long term lease to **you**.**
- Y. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and **waste material**. **Waste material** includes materials which are intended to be or have been recycled, reconditioned or reclaimed.**
- Pollutants shall not include potable water, water distributed to the consumer intended to be potable water, agricultural water, or water furnished to commercial users, or water used for fire suppression. Pollutants shall also not include smoke or fumes from a **hostile fire**.**
- Z. Products-completed operations hazard means all **bodily injury** and **property damage** occurring away from premises **you** own or rent and arising out of **your product** or **your work** except:**

1. Products that are still in **your** physical possession; or
2. Work that has not yet been completed or abandoned.

Your work will be deemed completed at the earliest of the following times:

1. When all of the work called for in **your** contract has been completed;
2. When all of the work to be done at the site has been completed if **your** contract calls for work at more than one site; or
3. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

This hazard does not include **bodily injury** or **property damage** arising out of:

1. The transportation of property, unless the injury or damage arises out of a condition in or of a vehicle created by the **loading or unloading** of it; or
2. The existence of tools, uninstalled equipment or abandoned or unused materials.

AA. Property damage means:

1. Physical injury to or destruction of tangible property, including all resulting loss of use of that property; or
2. Loss of use of tangible property that is not physically injured or destroyed.

BB. Public entity refers to that **municipality**, governmental body, department, or unit, which is a **Named Insured** in the Declarations.

CC. Retained limit refers to the amount stated in the Declarations. This amount may consist of a self insured retention, **underlying insurance**, or a combination thereof. If there are policies of **underlying insurance** and they do not apply to the **occurrence, wrongful act, and/or employee benefit wrongful act**, you shall retain this amount as self-insurance as stated in the Declarations with respect to:

1. **Bodily injury** or **property damage** arising out of each such **occurrence** or series of continuous, repeated or related **occurrences**;
2. Each such **wrongful act** or series of continuous, repeated or related **wrongful acts**; or
3. Each such **employee benefit wrongful act** or series of continuous, repeated, or related **employee benefit wrongful acts**.

The **retained limit**, with respect to a self-insured retention, shall include defense costs.

The **retained limit**, however, shall not include salaries of **your employees**, **your office** expenses, or expenses of any claims servicing organization that **you** have engaged.

- DD.** **Retaliation** means a **wrongful act of yours** relating to or alleged to be in response to any of the following activities:
1. The disclosure or threat of disclosure by your employee to a superior or to any governmental agency of any act by you which is alleged to be a violation of any federal, state, local, or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
 2. The actual or attempted exercise by **your employee** of any right that such **employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to **employee** rights;
 3. The filing of any **claim** or **suit** under the Federal False Claims Act of any other federal, state, local, or foreign **whistle-blower** law; or
 4. Strikes of **your employee**.
- EE.** **Source material, special nuclear material and by-product material** have the meaning given them in the Atomic Energy Act of 1954 or in any amendatory law thereof.
- FF.** **Spent fuel** means any fuel element or fuel component, solid or liquid, which has been used in or exposed to radiation in a **nuclear reactor**.
- GG.** **Suit** means a civil proceeding in which damages are alleged because of **bodily injury** or **property damage, wrongful act** or **employee benefit wrongful act** to which this insurance applies. **Suit** includes:
1. An arbitration proceeding in which such damages are claimed and to which **you** must submit or do submit with **our** consent; or
 2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which **you** submit with **our** consent.
- HH.** **Ultimate net loss** means the sum actually paid or payable due to a **claim** or **suit** for which **you** are liable either by a settlement to which **we** agreed or a final judgment, and shall include defense costs. Such sum will include proper adjustments for recoveries and salvage.
- II.** **Underlying insurance** refers to the policies listed in the Schedule of **Underlying Insurance** and includes:
1. Any renewal or replacement of such policies;
 2. Any other insurance available to the **you**; and
 3. Any other valid and collectible risk financing mechanism provided under a **joint powers authority**.
- JJ.** **Underlying insurer** means any insurer which provides a policy listed in the Schedule of **Underlying Insurance** and includes any insurer which provides any renewal or replacement of such policies and any insurer which provides any other insurance available to **you**.

KK. Waste means any waste material containing **by-product material** and arising out of the operation by any person or organization of any **nuclear facility** included within the definition of **nuclear facility**.

LL. Whistle-blower means an **employee**, who discloses or threatens to disclose to a superior or any governmental agency, or who gives testimony relating to any action by **you**, which may be a violation of public policy as reflected in legislation, administrative rules, regulations or decisions, judicial decisions, or professional codes of ethics.

MM. Wrongful act means:

Any actual or alleged error or misstatement, omission, negligent act, or breach of duty including misfeasance, malfeasance, and nonfeasance by **you**, including, but not limited to, those constituted by:

1. Any violation of antitrust statutes;
2. Any negligent ministerial act;
3. Any faulty preparation or approval of maps, plans, reports, surveys, designs, bid documents, bid specifications, other specifications, or inaccuracies due to estimates of probable costs, but only if any of the afore listed services are provided by any **insured** for another **insured**;
4. **Employment practice liability**; or
5. Discrimination on any basis, including, but not limited to: race, creed, religion, ethnic background, national origin, age, handicap, sex or sexual orientation; but not intentionally committed by **you** or at **your** direction.

Wrongful act also means any **personal injury offense** or **advertising injury offense**.

Advertising injury offense means any act, error, or omission constituted by one or more of the following:

1. Oral or written publication of material that slanders or libels a person or organization, or disparages a person or organization's goods, products, or services;
2. Oral or written publication of material that violates a person's right of privacy;
3. Misappropriation of advertising ideas or style of doing business; or
4. Infringement of copyright, title or slogan.

Personal injury offense means any act, error, or omission constituted by one or more of the following:

1. False arrest, detention or imprisonment;
2. Malicious prosecution;

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3. Oral or written publication of material that slanders or libels a person or organization, or disparages a person or organization's goods, products, or services;
4. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies by or on behalf of its owner, landlord or lessor;
5. Violation of an individual's right to privacy; or
6. Assault and battery.

NN. Your Product means:

1. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - a. You;
 - b. A person or organization whose business or assets you have acquired; and
2. Containers, other than vehicles, materials, parts or equipment furnished in connection with such goods or products;

Your product includes:

3. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your product;
4. The providing of or failure to provide warnings or instructions;
5. Work or operations performed by you or on your behalf; and
6. Materials, parts or equipment furnished in connection with such work or operations.

SECTION III. LIMITS OF INSURANCE

- A. The Limits of Insurance shown in the Declarations and the rules below state the most we will pay in excess of your retained limit regardless of the number of:
 1. **Insureds.** However, in the event that there are multiple municipalities as Named Insureds, our Limits of Insurance shall apply separately to each municipality insured under this Policy;
 2. **Claims made or suits brought;** or
 3. **Persons or organizations making claims or bringing suits.**

- B. The retained limit shown in the Declarations applies:
1. Only to damages for occurrences, losses for wrongful acts, or losses for employee benefit wrongful acts covered under this Policy; and
 2. Separately to each occurrence, wrongful act, or employee benefit wrongful act or series of continuous, repeated, or related occurrences, wrongful acts, or employee benefit wrongful acts; and
 3. Separately to each municipality insured under this Policy in the event that there are multiple municipalities as Named Insureds.
- C. Our duty to pay any sums that you become legally obligated to pay arises only after there has been a complete expenditure of your retained limit by means of payments for judgments, settlements, or defense costs. Your retained limit shall not be exhausted by your office expenses, employees' salaries, or expenses of any claims servicing organization that you have engaged. We will then be liable only for that portion of damages in excess of your retained limit up to our Limits of Insurance.
- D. If the limits of insurance of the underlying insurance are less than your retained limit, you shall bear the risk of the difference. If such limits, however, are greater than your retained limit, this Policy is in excess of the greater limits.
- E. The Per Occurrence or Wrongful Act or Employee Benefit Wrongful Act Limit of Insurance is the most we will pay for the sum of all damages because of bodily injury or property damage arising out of a single occurrence or all losses arising out of a single wrongful act or all losses arising out of a single employee benefit wrongful act.
- F. All occurrences arising out of continuous, repeated, or related occurrences shall be treated as one occurrence. All wrongful acts or employee benefit wrongful acts arising out of continuous, repeated, or related wrongful acts or employee benefit wrongful acts shall be treated as one wrongful act or one employee benefit wrongful act. The Limits of Insurance in effect when the first claim or suit is made and reported to us shall apply.
- G. The Aggregate Limits are the most we will pay for the total of all damages:
1. Under the products-completed operations hazard arising out of all occurrences; or
 2. For all losses arising out of all wrongful acts; or
 3. For all losses arising out of all employee benefit wrongful acts;
- and subject to SECTION III. A. above, if there are multiple municipalities as Named Insureds.

- H. The Limits of Insurance apply separately to each consecutive annual period. The Policy Period begins with the effective date shown in the Declarations. If the Policy Period is extended after issuance for an additional period of less than twelve (12) months, the additional period will be deemed part of the last preceding period.

SECTION IV. WHO IS AN INSURED

Insured means each of the following:

- A. The **Named Insured** designated in the Declarations;
- B. Those individuals who were or now are elected or appointed officials of the **Named Insured**, including members of its governing body or any other agencies, districts, authorities, committees, trustees, boards, commissions, or similar entity of the **Named Insured**, while acting on behalf of the **Named Insured**;
- C. Any of **your employees**, servants, or volunteers while acting within the course and scope of their employment or duties as volunteers;
- D. Any and all legally authorized **joint power authority(ies)** representing any listed **Named Insured** under this Policy. The following are also insureds with respect to such **joint power authority(ies)**:
1. The **municipality** agencies participating as member agencies in the **joint power authority(ies)**, and any and all districts, authorities, committees, trustees, boards, commissions, or similar entity subject to the direction or control of such agencies or for which the board members act as governing body. The member agency includes all departments and constituent agencies of the member agency; and
 2. Any person(s) who are past or present elected or appointed officers, **employees**, or authorized volunteers of the member agencies, whether or not compensated while acting on behalf of the member agencies and within their scope of employment or volunteer capacities, including acting on boards at the direction of the agencies.
- E. Any person:
1. Designated in paragraphs A. through D. with respect to any **automobile** not owned by **you** that is used in **your** operations as a **public entity**; and
 2. Using any **owned automobile** or **hired automobile** or any person legally responsible for the use thereof, provided that the **automobile** is being used with **your** permission.

The coverage granted by this provision, however, does not apply to:

1. Any person operating an **automobile** while working in a business that sells, services, repairs, delivers, tests, parks, or stores **automobiles**; or
2. The owner or lessee of any **hired automobile**, other than the **insured** or any agent or **employee** of such owner or lessee.

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SECTION V. EXCLUSIONS

We will not defend or pay under this Policy for **claims or suits** against you:

- A. For **bodily injury or property damage**, arising out of a **wrongful act or employee benefit wrongful act** whether causing or contributing to such **bodily injury or property damage**. However, if **bodily injury or property damage** arises out of an **occurrence**, coverage applies only to the **occurrence** and is subject to the terms and conditions of this Policy;
- B. Arising out of the ownership, maintenance, loading or unloading, use or operation of any aircraft, airfields, runways, hangars, buildings or other properties in connection with aviation activities.

However, in connection with airfields, runways, hangers, buildings or other properties in connection with aviation activities, this exclusion shall not apply to those areas open to the public for the purpose of entering, leaving, or using the airport facilities, including parking lots and garages;
- C. For which **you**, or any carrier as **your** insurer, may be held liable under any workers' or unemployment compensation law, disability benefits law or any similar law;
- D. Arising out of the liability of **your employee** for **bodily injury** to another of **your employee(s)** injured in the course of his or her employment. However, this exclusion does not apply to liability assumed by **you** under any **insured contract**;
- E. Arising out of any **advertising injury offense** due to:
 - 1. Breach of contract, other than misappropriation of advertising ideas under an implied contract;
 - 2. The failure of goods, products or services to conform with advertised quality or performance;
 - 3. The wrong description of the price of goods, products, or services; or
 - 4. Operations by an **insured** whose primary business is advertising, broadcasting, publishing or telecasting.
- F. For **property damage**:
 - 1. To property owned by **you**; or
 - 2. To aircraft in **your** care, custody or control or as to which **you** are for any purpose exercising physical control.
- G. Arising from liability **you** assume in a contract or agreement. This exclusion does not apply to liability for damages;

1. Assumed in a contract or agreement that is an **insured contract** provided the **bodily injury or property damage** occurs subsequent to the execution of the contract or agreement; or
 2. That **you** would have in the absence of the contract or agreement;
- H.
1. For **bodily injury or property damage** due to an **occurrence** or loss due to a **wrongful act** which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time;
 2. For any loss, cost, or expense arising out of any:
 - a. Request, demand or order that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
 - b. **Claim or suit** by, or on behalf of, a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

However, 2.b. shall not apply to such loss, cost, or expense arising from any spill, release, or other hazardous condition at or from the premises, equipment, or location(s) which **you** do not own, rent, control or occupy.

However, this exclusion shall not apply to the following:

- i. Any liability arising out of **bodily injury or property damage** due to an **occurrence** or loss due to a **wrongful act** by **you** arising out of heat, smoke, or fumes from a **hostile fire**;
- ii. Any liability arising out of explosion, lightning, windstorm, vandalism or malicious mischief, collapse, riot and civil commotion, flood, earthquake or collision, upset, or overturn of an **automobile** or equipment;
- iii. Any liability arising out of police use of mace, oleoresin capsicum (o.c.), pepper gas or tear gas;
- iv. Weed abatement or spraying; or
- v. Any liability arising out of the **products-completed operations hazard**.

All **bodily injury or property damage** due to an **occurrence** or loss due to a **wrongful act** arising from i., ii., iii., iv., or v. above arising out of the same, interrelated, associated, repeated or continual discharge, dispersal, release or escape of **pollutants** shall be deemed one **occurrence** or **wrongful act**. The commencement of such discharge, dispersal, release or escape of **pollutants** shall be recorded and reported to the Risk Manager or designated Department Head within a seventy-two (72) hour period.

It is further agreed that regardless of whether any suit or claim against you has been made, you shall give written notice to us or any of our authorized brokers within forty (40) calendar days of the Risk Manager's or designated Department Head's recorded entry of such discharge, dispersal, release or escape of pollutants which may result in liability for bodily injury or property damage due to an occurrence or loss due to a wrongful act as described in i., ii., iii., iv., or v. above;

- I.
 - 1. Arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos products, asbestos fibers, or asbestos dust; or
 - 2. For any of your obligations to indemnify any party because of damage arising out of bodily injury or property damage due to an occurrence or loss due to a wrongful act at any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust; or
 - 3. For any of your obligations to defend any claim or suit against you seeking damages arising out of bodily injury or property damage due to an occurrence or loss due to a wrongful act, if such claim or suit results from or is contributed to any combination of the following: manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust.

We also shall not pay any cost related to the defense, investigation, and settlement of any such claim or suit as described in 1., 2., or 3. above;

J. For liability:

- 1. With respect to which you are an insured under a nuclear energy liability policy by the Mutual Atomic Energy Liability Underwriters, the American Nuclear Insurers, or the Nuclear Insurance Association of Canada, or any successor organizations, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- 2. Arising out of the hazardous properties of nuclear material with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) you are, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization; or
- 3. Arising out of the hazardous properties of nuclear material, if:
 - a. The nuclear material is at any nuclear facility owned by, or operated by you or on your behalf or has been discharged or dispersed therefrom;

- b. The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by you or on your behalf; or
- c. The damage or loss arises out of the furnishing by you of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion c. applies only to damage or loss to such nuclear facility and any property located at the facility;

We also shall not pay any cost related to the defense, investigation, and settlement of any claim or suit.

- K. Arising out of the failure or inability to supply or provide an adequate supply of electricity, fuel, or water arising out of the interruption of the electrical power, fuel, or water supply;
- L. Arising out of a wrongful act by you or on your behalf in the handling of claims or suits within your retained limit whenever you investigate, defend, or settle such claims or suits or elect a third party to investigate, defend or settle such claims or suits;
- M. Arising out of the effecting or failure to effect insurance contracts;
- N. Arising out of the Employee Retirement Income Security Act of 1974 or amendments thereto;
- O. Arising out of an alleged willful commission of a crime by you or other dishonest, fraudulent, or malicious act. At our discretion, however, we will pay for defense costs until final adjudication, judgment, or settlement to which we have agreed. If the judgment or final adjudication is adverse to you, you will reimburse us for all costs associated with the defense.

This exclusion shall not apply to any vicarious liability that any insured has with regard to the managerial, advisory, supervisory, or controlling obligations over the actions of another insured.

- P. Arising out of your wrongful act for gain, profit, or advantage to which you are not legally entitled. At our discretion, however, we will pay for defense costs for any claim or suit arising from an alleged willful commission of a crime by you or other dishonor, fraudulent or malicious act, for any claim or suit arising out of your wrongful act for gain, profit, or advantage to which you are not legally entitled until final adjudication, judgment or settlement to which we have agreed. If the judgment or final adjudication is adverse to you, you will reimburse us for all costs associated with the defense;

This exclusion shall not apply to any vicarious liability that any insured has with regard to the managerial, advisory, supervisory, or controlling obligations over the actions of another insured;

- Q. For personal injury offense or advertising injury offense:
 - 1. Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity; or

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2. Arising out of oral or written publication of material whose first publication took place before the beginning of the Policy Period. All **personal injury offense** or **advertising injury offense** arising out of publication of the same or similar material subsequent to the beginning of the Policy Period is also excluded;

- R. Arising out of the purchase, sale, or offer of sale, or solicitation of any security, debt, bank deposit or financial interest or instrument;
- S. Arising out of any representations made at any time in relation to the price or value of any security, debt, bank deposit, or financial interest or instrument, including, but not limited to, advice given to any person to participate in any plan included in the **employee benefit program**;
- T. Arising out of any depreciation or decline in price or value of any security, debt, bank deposit or financial interest or instrument;
- U. Arising out of an insufficiency of funds to meet any obligation under any **employee benefit program**;
- V. Arising out of act, error, or omission by the **insured** to effect and maintain insurance or bonding for plan property or assets of **employee benefit program**;
- W. Arising out of failure of performance or performance under any contract by an insurer of benefits subject to the **employee benefit program**;
- X. For any **property damage** arising out of **land subsidence** for any reason whatsoever;
- Y. Arising out of direct condemnation of property or exercise of power of eminent domain by **you** or on **your** behalf, or inverse condemnation, or any taking of property by **you** which is compensable under the Fifth or Fourteenth Amendments to the United States Constitution, or any taking of property by **you** which is compensable under law of the State in which the **claim** or **suit** is made;

This exclusion shall not apply to physical injury or to destruction of tangible property, including all resulting loss of use of such property for which **you** may be legally responsible and for which recovery is sought for **claims** or **suits** for inverse condemnation, by whatever name called; provided, however, that in any case which a **claim** or **suit** for inverse condemnation, by whatever name called, is made against **you**, coverage shall only exist for physical injury to or destruction of tangible property, including all resulting loss of use of that property, and there shall be no coverage for reduced value of property (diminution of value), attorney fees, expert fees, severance damages, relocation costs or any other form of relief, however denominated;

- Z. Arising out of the rupture, bursting, over-topping, flooding, cracking, seepage, under-seepage, accidental discharge or partial or complete structural failure of any **dam**;
- AA. For **wrongful acts** arising out of refund of taxes, fees, or assessments;
- BB. Arising out of exposure to or transmission of any actual or suspected Human Immunodeficiency Virus (HIV), Acquired Immune Deficiency Syndrome (AIDS), or AIDS Related Complex (ARC);

CC. For liability arising out of, or in connection with, the operation of any hospital, clinic, or health care facility, owned or operated by the **insured**, including, but not limited to:

1. The rendering or failure to render:

- a. Medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;
- b. Any service or treatment related to physical or mental health or of a professional nature;
- c. Any cosmetic or tonsorial service or treatment; or

2. The furnishing of or dispensing of drugs or medical, dental or surgical supplies or appliances.

This exclusion shall not apply to any liability arising out of:

- a. Occupational physical examinations, paramedics, ambulance operations, or emergency medical technicians;
- b. Employment practice liability; or
- c. First aid to any person;

DD. For liability arising out of or in connection with any transit authority, transit system, or public transportation system owned, operated, or regulated by any **insured**. This exclusion shall not apply to transit or public transportation systems operating over non-fixed routes, including, but not limited to, Dial-a-Ride, senior citizen transportation, or handicapped persons transportation or to contingent liability coverage where such services are contracted;

EE. For injunctions, equitable relief, or any other form of relief other than the payment of money damages; or

FF. For liability arising out of or in connection with the operation of any school, owned or operated by you.

SECTION VI. GENERAL CONDITIONS

A. Appeals

If **you** or **your underlying insurers** do not appeal a judgment in excess of **your retained limit**, **we** have the right to make such an appeal. If **we** elect to appeal, the cost incurred will be at **our** expense and not included within **our** Limits of Insurance. **Our** liability on such an award or judgment shall not exceed **our** Limits of Insurance as stated in the Declarations.

B. Arbitration

In the event of a disagreement as to the interpretation of this Policy, the disagreement shall be submitted to binding arbitration before a panel of three (3) arbitrators. Within thirty (30) days of a written request for arbitration by either you or us, each party will choose an arbitrator. If the two arbitrators are unable to agree within one (1) month upon the third arbitrator, such arbitrator shall at the request of either party be selected by the American Arbitration Association in accordance with its rules and procedures.

The parties shall submit their cases to the panel by written and oral evidence at a hearing time and place selected by the third arbitrator. The panel shall be relieved of all judicial formality, shall not be obligated to adhere to the strict rules of law or of evidence, shall seek to enforce the intent of the parties hereto and may refer to, but are limited to, relevant legal principles. The decision of at least two (2) of the three (3) panel members shall be binding and final and not subject to appeal except for grounds of fraud and gross misconduct by the arbitrators. The award will be issued within thirty (30) days of the close of the hearings. Each party shall bear the expenses of its designated arbitrator and shall jointly and equally share with the other the expense of the third arbitrator and of the arbitration.

The arbitration proceedings shall take place in the State shown in Item 1. of the Declarations. The procedural rules applicable to this arbitration shall, except as provided otherwise herein, be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

C. Audit

We may audit and examine your books and records as they relate to this Policy at any time during the Policy Period and for up to three (3) years after the expiration or termination of this Policy.

D. Bankruptcy or Insolvency

Your bankruptcy, insolvency or inability to pay, or the bankruptcy, insolvency or inability to pay of any of your underlying insurers will not relieve us from the payment of any claim or suit covered by this Policy.

But under no circumstances will such bankruptcy, insolvency, or inability to pay require us to drop down or in any way replace your retained limit or assume any obligation associated with your retained limit.

E. Cancellation/Change/Nonrenewal

1. If this Policy has been in effect for more than sixty (60) days, we may not cancel this Policy unless for non-payment of premium. You may cancel this Policy at any time, by surrendering the Policy to us or to any of our authorized brokers or by mailing to us written notice stating when thereafter the cancellation shall be effective. If we cancel this Policy because you have failed to pay a premium when due, we may cancel this

Policy by mailing written notice of cancellation to **you** at the address shown in the Declarations stating when, not less than twenty (20) days thereafter, such cancellation shall be effective. Mailing such notice to **you** at **your** mailing address shown in the Declarations will be sufficient to prove cancellation.

2. If this Policy has been in effect for less than sixty (60) days and is not a renewal, **we** may cancel this Policy by mailing or delivering to the first **Named Insured** written notice of cancellation at least seventy-five (75) days before the effective date of cancellation if there has been:
 - a. A material misstatement or misrepresentation, or
 - b. Failure to comply with underwriting requirements established by **us**.
3. The Policy Period will end on the day and hour stated in the cancellation/nonrenewal notice.
4. If **we** cancel, the final premium will be calculated pro rata based on the time this Policy was in force. The final premium will not be less than the pro rata share of the Minimum Premium as shown in the Declarations.
5. If **you** cancel, the earned premium shall be computed in accordance with the customary short rate table and procedure, which is subject to the annual Minimum Earned Premium.
6. A premium adjustment will be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective even if **we** have not made or offered any refund due **you**. **Our** check or **our** representative's check, mailed or delivered, shall be sufficient tender of any refund due **you**.
7. The first **Named Insured**, in the Declarations, will act on behalf of all other insureds with respect to the giving and receiving of notice of cancellation/change/nonrenewal and the receipt of any refund that may become payable under this Policy.
8. If **we** elect to renew this Policy and the renewal is subject to a premium increase of twenty-five percent (25%) or greater, or a reduction in Limits of Insurance, or a substantial reduction in coverage, then **we** shall mail written notice of the change(s) to the first **Named Insured** and **our** authorized broker (at the mailing address shown on this Policy) at least sixty (60) days before the expiration date of this Policy. If **we** fail to provide sixty (60) days notice, this Policy shall remain in effect for sixty (60) days after the date of mailing the notice or until the effective date of the replacement coverage is obtained by the first **Named Insured**, whichever occurs first. If the first **Named Insured** elects not to renew, and earned premium for the period of extension of the terminated Policy will be calculated pro rata at the lower of the current or previous year's rate. If the first **Named Insured** accepts the renewal, the premium increase, if any, and other changes, then such changes are effective the day following the expiration date of this current Policy.

9. **We** may nonrenew this Policy by giving written notice of nonrenewal to the first **Named Insured** and **our** authorized broker, (at the mailing address shown on this Policy) no less than ninety (90) days prior to the expiration date of the Policy. If **we** fail to mail or deliver the notice of nonrenewal, **we** will extend this existing Policy for an additional ninety (90) days. Notice of nonrenewal will not be required if: (a) **we** have offered renewal, (b) **you** have replaced coverage or (c) **you** have agreed in writing to replace coverage. If **we** provide such notice and extend this Policy for ninety (90) days or less, an additional notice of nonrenewal is not required.

F. Conformance to Statute

To the extent a term or condition of this Policy conflicts with a statute of the state within which this Policy is issued, this Policy shall be amended to conform to the minimum requirement of the statute.

G. Duties in The Event of an Occurrence or Wrongful Act or Employee Benefit Wrongful Act or Claim or Suit

1. General Reporting Requirements

- a. **You** must notify **us** as soon as practicable of an occurrence, wrongful act, or employee benefit wrongful act which may result in a claim or suit under this Policy. To the extent possible, notice should include:
- i. How, when, and where the occurrence, wrongful act, or employment benefit wrongful act took place;
 - ii. Names and addresses of any injured persons and witnesses; and
 - iii. The nature and or location of any injury or damage arising out of the occurrence, loss arising out of the wrongful act or employee benefit wrongful act.
- b. If a claim is made or suit is brought against **you** that is reasonably likely to involve this Policy, **you** must notify **us** in writing as soon as practicable.
- c. **You** and any other involved insured must:
- i. Cooperate with the underlying insurers;
 - ii. Comply with the terms and conditions of the underlying insurance; and

iii. Pursue all rights of contribution or indemnity against any person or organization who may be liable to you because of **bodily injury or property damage, personal injury offense, advertising injury offense, wrongful act or employee benefit wrongful act** under this Policy or any **underlying insurance**. This condition, however, shall not apply to the self insured retention of the **retained limit**.

c. When we believe that a **claim or suit** may exceed the **retained limit**, we may join **you** and, if applicable, the **underlying insurer** in the investigation, settlement and defense of all **claims and suits** in connection with such **occurrence, wrongful act, or employee benefit wrongful act**. In such event, **we** and **you** will cooperate fully with each other.

2. Special Serious Claims Reporting Requirements

You shall give us prompt written notice of all occurrences, wrongful acts, or employee benefit wrongful acts for claims or suits of which you become aware which involve:

- a. A serious case where, in which **your** judgment or the judgment of **your** defense counsel, the exposure may exceed \$250,000;
- b. A demand or demands totaling \$250,000. or more;
- c. Death;
- d. Paralysis, paraplegia, quadriplegia;
- e. Loss of eye(s) or limb(s);
- f. Spinal cord or brain injury;
- g. Sensory organ or nerve injury, or neurological deficit;
- h. Serious burns;
- i. Substantial disability or disfigurement; or
- j. Loss of work time of six months or more.

3. Such notice is to be sent with all pertinent facts as respect **GENERAL CONDITIONS**, paragraphs G.1. and 2. to:

C. V. Starr and Co.
C. V. Starr Claims
175 Water Street, 22nd Floor
New York, New York. 10038

H. First Named Insured

The insured first named in Item 1. in the Declarations is authorized to act on behalf of all **Named Insureds** and other insureds with respect to the giving and receiving of notice of cancellation and to receiving any return premium that may become payable under this Policy. The insured first named in Item 1. in the Declarations is responsible for the payment of all premiums, but the **Named Insureds** jointly and severally agree to make such premium payments in full if the insured first named in Item 1. fails to pay the amount due within thirty (30) days after we give a written demand for payment to the insured first named in Item 1.

I. Inspection

We have the right, but are not obligated, to inspect **your** premises and operations at any time. Our inspections are not safety inspections. They relate only to the insurability of **your** premises and operations and the premiums to be charged. We may give **you** reports on the conditions we find. We may also recommend changes. While they may help reduce claims or suits, we do not undertake to perform the duty of any person or organization to provide for the health or safety of **your employees** or the public. We do not warrant that **your** premises or operations are safe or healthful or that they comply with laws, regulations, codes, or standards.

J. Legal Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms and conditions of this Policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability.

K. Other Insurance

If other valid and collectible insurance or group coverage under a joint powers authority applies to a claim or suit that is also covered by this Policy, and subject to SECTION III. LIMITS OF INSURANCE of this Policy, this Policy will apply excess of the other insurance, whether this other insurance is primary, excess, contingent, or issued on any other basis. This provision, however, will not apply if the other insurance is specifically written to be excess of this Policy.

L. **Our Right of Approval**

We reserve the right to approve defense counsel for claims or suits likely to exceed your retained limit.

M. **Policy Changes**

This Policy contains all the agreements between you and us concerning this insurance. The first **Named Insured** in the Declarations is authorized to make changes in this Policy with our consent. This Policy can only be changed by a written endorsement we issue and make a part of this Policy.

Notice to any broker or knowledge possessed by a broker or any other person will not effect a waiver or change in any part of this Policy.

N. **Policy Period**

The Policy Period commences on the effective date shown in the Declarations. The period ends on the earlier of either the expiration date or the effective date of cancellation of this Policy. If you became an insured under this Policy after the effective date, the Policy Period begins on the date you became an insured.

O. **Policy Territory**

This Policy applies to occurrences, wrongful acts, and employee benefit wrongful acts anywhere in the world, but only if a claim is made and a suit is brought for such occurrence, wrongful act, and employee benefit wrongful act in the United States of America.

P. **Premium**

You shall be responsible for the payment of the Advanced Premium, as indicated in the Declarations, prior to the effective date of this Policy. The Advanced Premium is a deposit premium only, which shall be credited to the amount of the earned premium due at the end of the Policy Period. The earned premium for the Policy Period shall be computed by application of the rate shown in the Policy Declarations to the audited exposure base. If the total earned premium so computed is less than the Advanced Premium previously paid, we shall return to the **Named Insured** the unearned portion paid by the **Named Insured**. Earned premium in any Policy Period shall be subject to the Minimum Premium and the Minimum Earned Premium, as stated in the Declarations. If the total earned premium exceeds the Advanced Premium, the **Named Insured** shall remit to us the balance due in accordance with our regular payment terms and conditions.

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Q. Premium Audit

You must keep records of the information **we** need for premium computation, and send us copies at such times as **we** may request.

At the close of the Policy Period, **we** will compute the earned premium for that Policy Period.

No additional premium will be charged at audit unless the actual exposure base exceeds the estimated exposure base by more than 15%, and then only for the audited exposure base that exceeds 115% of the estimated exposure base as described above. This clause only applies to **Named Insureds** at the inception of this Policy and not to **Named Insureds** added subsequently.

R. Separation of Insureds

Except with respect to the Limits of Insurance Section of this Policy and any rights or duties specifically assigned to the first **Named Insured** designated in the Declarations, this insurance applies:

1. As if each **Named Insured** were the only **Named Insured**; and
2. Separately to each insured against whom a claim is made or suit brought.

S. Subrogation

If **you** have rights to recover all or part of any payment **we** have made under this Policy, those rights are transferred to us. **You** must do nothing after such payment to impair these rights and **you** must help us enforce them.

Any recoveries shall be applied as follows:

1. Any interest, including **yours**, that have been paid in an amount in excess of **our** payment under this Policy will be reimbursed first;
2. **We** then will be reimbursed up to the amount **we** have paid; and
3. Any interests, including **yours**, over which **our** insurance is excess, are entitled to claim the residue.

Expenses incurred in the exercise of rights of recovery shall be apportioned between the interests, including **yours**, in the ratio of their respective recoveries as finally settled.

T. Transfers of Your Rights and Duties

The interest of any insured is not assignable. **Your** rights and duties under this Policy may not be transferred without **our** written consent.

If **you** are declared legally bankrupt, **your** rights and duties will be transferred to **your** legal representative but only while acting within the scope of his duties as **your** legal representative.

IN WITNESS WHEREOF, we have caused this Policy to be signed by our President and Secretary and countersigned where required by law on the Declarations Page by our duly authorized representative.


Secretary

The Insurance Company
of the State of Pennsylvania



President

The Insurance Company
of the State of Pennsylvania

FORMS SCHEDULE

Named Insured: ABAG PLAN CORPORATION, ET AL

Policy Number: 4 7041811

Effective 12:01 AM: July 1, 2004

<u>End't. No.</u>	<u>Form Name</u>	<u>Form Number/</u> <u>Edition Date</u>
	Special Exs Liab Policy for Public Entities Dec	70109 (03/98)
	Special Excess Liab Policy for Public Entities	70108 (03/98)
1	Named Insured Endorsement	MNSCPT (07/03)
2	Amendatory Endorsement	MNSCPT (07/04)
3	California Cancellation/Nonrenewal Endorsement	52133 (03/94)
4	Fungus Exclusion	MNSCPT (07/04)
5	Limits of Insurance Amendatory Endorsement	MNSCPT (07/03)
6	Policy Territory Limitation Endorsement	MNSCPT (07/04)
7	Retained Amount Endorsement	MNSCPT (07/04)
8	Terrorism Exclusion	MNSCPT (07/03)

ENDORSEMENT NO. 1

This endorsement, effective 12:01 AM: July 1, 2004

Forms a part of policy no.: 4 7041811

Issued to: ABAG PLAN CORPORATION, ET AL


By: THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

NAMED INSURED ENDORSEMENT

It is hereby agreed that the named insured is completed to read as following:

1. ABAG PLAN CORPORATION
2. CITY OF AMERICAN CANYON
3. TOWN OF ATHERTON
4. CITY OF BELVEDERE
5. CITY OF BENICIA
6. CITY OF BURLINGAME
7. CITY OF CAMPBELL
8. TOWN OF COLMA
9. CITY OF CUPERTINO
10. CITY OF DUBLIN
11. CITY OF EAST PALO ALTO
12. CITY OF FOSTER CITY
13. CITY OF GILROY
14. CITY OF HALF MOON BAY
15. TOWN OF HILLSBOROUGH
16. CITY OF LOS ALTOS
17. TOWN OF LOS ALTOS HILLS
18. TOWN OF LOS GATOS
19. CITY OF MILLBRAE
20. CITY OF MILPITAS
21. CITY OF MORGAN HILL
22. CITY OF NEWARK
23. CITY OF PACIFICA
24. TOWN OF PORTOLA VALLEY
25. TOWN OF ROSS
26. CITY OF SAN BRUNO
27. CITY OF SAN CARLOS
28. CITY OF SARATOGA
29. CITY OF SOUTH SAN FRANCISCO
30. CITY OF SUISUN CITY
31. TOWN OF TIBOURON
32. TOWN OF WOODSIDE
33. CITY OF SAN MATEO

All other terms, conditions and exclusions of the policy remain unchanged.



Authorized Representative
or countersignature (where required by law)

INSURED'S COPY

ENDORSEMENT NO. 2

This endorsement, effective 12:01 AM: July 1, 2004

Forms a part of policy no.: 4 7041811

Issued to: ABAG PLAN CORPORATION, ET AL

By: THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL EXCESS LIABILITY POLICY FOR PUBLIC ENTITIES


AMENDATORY ENDORSEMENT

SECTION V. EXCLUSIONS,

- Z. Arising out of the rupture, bursting, over-topping, flooding, cracking, seepage, underseepage, accidental discharge or partial or complete structural failure of any dam,

Is deleted in it's entirety, as respects City of San Mateo, California only.

All other terms, conditions and exclusions of the policy remain unchanged.



Authorized Representative
or countersignature (where required by law)

INSURED'S COPY

ENDORSEMENT No. 3

This endorsement, effective 12:01 AM: July 1, 2004

Forms a part of policy no.: 4 7041811

Issued to: ABAG PLAN CORPORATION, ET AL

By: THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

CALIFORNIA CANCELLATION/NONRENEWAL
ENDORSEMENT

Wherever used in this endorsement: 1) "we", "us", "our", and "Insurer" mean the insurance company which issued this policy; and 2) "you", "your", "named Insured", "First Named Insured", and "Insured" mean the Named Corporation, Named Organization, Named Sponsor, Named Insured, or Insured stated in the declarations page; and 3) "Other Insured(s)" means all other persons or entities afforded coverage under the policy.

In consideration of the premium charged, it is hereby understood and agreed that the cancellation clause is replaced with the following:

CANCELLATION

The First Named Insured shown in the declarations may cancel the policy by mailing or delivering to the Insurer advance written notice of cancellation.

If the policy has been in effect for more than sixty (60) days or if it is a renewal, effective immediately, the Insurer may not cancel the policy unless such cancellation is based on one or more of the following reasons:

- (1) Nonpayment of premium; including payment due on a prior policy issued by the Insurer and due during the current policy term covering the same risks.
- (2) A judgement by a court or an administrative tribunal that the named Insured has violated any law of this state or of the United States having as one of its necessary elements an act which materially increases any of the risks insured against.
- (3) Discovery of fraud or material misrepresentation by either of the following:
 - a) The Insured or Other Insured(s) or his or her representative in obtaining the insurance; or
 - b) The named Insured or his or her representative in pursuing a claim under the policy.
- (4) Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by the named Insured or Other Insured(s) or a representative of same, which materially increase any of the risks insured against.

- (5) Failure by the named Insured or Other Insured(s) or a representative of same to implement reasonable loss control requirements which were agreed to by the Insured as a condition of policy issuance or which were conditions precedent to the use by the Insurer of a particular rate or rating plan if the failure materially increases any of the risks insured against.
- (6) A determination by the commissioner that the loss of, or changes in, an insurer's reinsurance covering all or part of the risk would threaten the financial integrity or solvency of the Insurer.
- (7) A determination by the commissioner that a continuation of the policy coverage could place the Insurer in violation of the laws of this state or the state of its domicile or that the continuation of coverage would threaten the solvency of the Insurer.
- (8) A change by the named Insured or Other Insured(s) or a representative of same in the activities or property of the commercial or industrial enterprise which results in a material added risk, a materially increased risk or a materially changed risk, unless the added, increased, or changed risk is included in the policy.

Notice of cancellation shall be delivered or mailed to the producer of record and the named Insured at least thirty (30) days prior to the effective date of cancellation. Where cancellation is for nonpayment of premium or fraud, notice shall be given no less than ten (10) days prior to the effective date of cancellation.

NONRENEWAL

If the Insurer decides not to renew the policy, the Insurer shall mail or deliver to the producer of record and the named Insured notice of nonrenewal at least sixty (60) days but no more than 120 days prior to the end of the policy period. The notice shall contain the reason for nonrenewal of the policy.

RENEWAL

If a policy has been in effect for more than sixty (60) days or if the policy is a renewal, effective immediately no increase in premium, reduction in limits, or change in the conditions of coverage shall be effective during the policy period unless based upon one of the following reasons:

- (1) Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards by the named Insured or Other Insured(s) which materially increase any of the risks or hazards insured against.
- (2) Failure by the named Insured or Other Insured(s) to implement reasonable loss control requirements which were agreed to by the Insured as a condition of policy issuance or which were conditions precedent to the use by the Insurer of a particular rate or rating plan, if the failure materially increases any of the risks insured against.
- (3) A determination by the commissioner that loss of or changes in an insurer's reinsurance covering all or part of the risk covered by the policy would threaten the financial integrity or solvency of the Insurer unless the change in the terms or conditions or rate upon which the premium is based is permitted.

- (4) A change by the named Insured or Other Insured(s) in the activities or property of the commercial or industrial enterprise which results in a materially added risk, a materially increased risk, or materially changed risk, unless the added, increased, or changed risk is included in the policy.

Written notice shall be mailed or delivered to the named Insured and the producer of record at least thirty (30) days prior to the effective date of any increase, reduction or change.

All other terms, conditions and exclusions of the policy remain the same.



Authorized Representative

ENDORSEMENT NO. 4

This endorsement, effective 12:01 AM: July 1, 2004

Forms a part of policy no.: 4 7041811

Issued to: ABAG PLAN CORPORATION, ET AL

By: THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

**SPECIAL EXCESS LIABILITY POLICY FOR PUBLIC ENTITIES
Fungus EXCLUSION**

Section V. Exclusions is amended by adding the following exclusion to the Policy:

This insurance does not apply to **bodily injury, property damage, personal injury, advertising injury** or any other loss, injury, damage, cost or expense, including , but not limited to, losses, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- a. Any **fungus(i), molds(s), mildew** or yeast, or
- b. Any **spore(s)** or toxins created or produced by or emanating from such **fungus(i), mold(s), mildew** or yeast, or
- c. Any substance, vapor, gas, or other emission or organic or inorganic body or substance produced by or arising out of any **fungus(i), mold(s), mildew** or yeast, or
- d. Any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbors, nurtures or acts as a medium for any **fungus(i) , mold(s), mildew, yeast, or spore(s)** or toxins emanating therefrom,

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that loss, injury ,damage, cost or expense.

For the purposes of this exclusion, the following definitions are added to the Policy:

Fungus(i) includes, but is not limited to, any of the plants or organisms belonging to the major group **Fungi**, lacking chlorophyll, and including **molds, rusts, mildews, smuts** and mushrooms.

ENDORSEMENT NO. 4 (Continued)

Mold(s) includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and **fungi** that produce **molds**.

Spore(s) means any dormant or reproductive body produced by or arising or emanating out of any **fungus(i)**, **mold(s)**, mildew, plants, organisms or microorganisms.

Page 2 of 2

All other terms, conditions and exclusions of the policy remain unchanged.



Authorized Representative
or countersignature (where required by law)

INSURED'S COPY

ENDORSEMENT NO. 5

This endorsement, effective 12:01 AM: July 1, 2004

Forms a part of policy no.: 4 7041811

Issued to: ABAG PLAN CORPORATION, ET AL

By: THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

SPECIAL EXCESS LIABILITY POLICY FOR PUBLIC ENTITIES
LIMITS OF INSURANCE AMENDATORY ENDORSEMENT

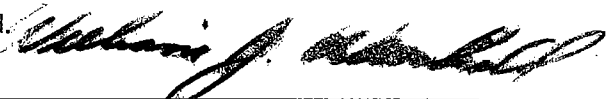
Declarations page [form 70109 (3/98)], Item 3, A., 1., b., Limits of Liability is amended to read:

Errors and Omissions Liability Aggregate, other than
personal and advertising injury offense wrongful acts

Policy [form 70108 (3/98)], SECTION III, Limits of Insurance, item G., 2., is amended to read:

2. For all losses arising out of all wrongful acts,
other than personal and advertising injury
offense wrongful acts, or

All other terms, conditions and exclusions of the policy remain unchanged.



Authorized Representative
or countersignature (where required by law)

INSURED'S COPY

ENDORSEMENT NO. 6

This endorsement, effective 12:01 AM: July 1, 2004

Forms a part of policy no.: 4 7041811

Issued to: ABAG PLAN CORPORATION, ET AL

By: THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL EXCESS LIABILITY POLICY FOR PUBLIC ENTITIES


Policy Territory Limitation Endorsement

SECTION VI., GENERAL CONDITIONS, paragraph O. is hereby deleted in its entirety and replaced by the following:

Policy Territory

This Policy applies to **occurrences, wrongful acts, and employee benefit wrongful acts** anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America, but only if a **claim** is made and a **suit** is brought for such **occurrence, wrongful act, and employee benefit wrongful act** in the United States of America.

All other terms, conditions and exclusions of the policy remain unchanged.



**Authorized Representative
or countersignature (where required by law)**

INSURED'S COPY

ENDORSEMENT NO. 7

This endorsement, effective 12:01 AM: July 1, 2004

Forms a part of policy no.: 4 7041811

Issued to: ABAG PLAN CORPORATION, ET AL

By: THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL EXCESS LIABILITY POLICY FOR PUBLIC ENTITIES

RETAINED AMOUNT ENDORSEMENT


ITEM 3. LIMITS OF INSURANCE B. Retained Limit is hereby deleted in its entirety and replaced by the following.

B. Retained Limit(s)

\$5,000,000 Any one occurrence, wrongful act (other than employment practice liability) or employee benefit wrongful act or series of continuous, repeated, or related occurrences, or wrongful acts or employee benefit wrongful acts.

\$5,000,000 Any one wrongful act arising out of employment practice liability, or series of continuous, repeated, or related occurrences or wrongful acts arising out of employment practice liability.

All other terms, conditions and exclusions of the policy remain unchanged.


Authorized Representative
or countersignature (where required by law)

INSURED'S COPY

ENDORSEMENT NO. 8

This endorsement, effective 12:01 AM: July 1, 2004

Forms a part of policy no.: 4 7041811

Issued to: ABAG PLAN CORPORATION, ET AL

By: THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Special Excess Liability for Public Entities Policy Form Terrorism Exclusion

This insurance does not apply to loss arising directly or indirectly as a result of a certified act of terrorism defined by Section 102. Definitions., of the Terrorism Risk Insurance Act of 2002 and any revisions or amendments.

For purposes of this endorsement and in compliance with the Terrorism Risk Insurance Act of 2002, an **act of terrorism** shall mean:


(1) Act of Terrorism:

- (A) Certification. - The term **act of terrorism** means any act that is certified by the Secretary of the Treasury of the United States, in concurrence with the Secretary of State, and the Attorney General of the United States:
- (i) To be an **act of terrorism**,
 - (ii) To be a violent act or an act that is dangerous to:
 - (I) Human life,
 - (II) Property, or
 - (III) Infrastructure,
 - (iii) To have resulted in damage within the United States, or outside of the United States in the case of:
 - (I) An air carrier or vessel described in paragraph (5)(B), [for the convenience of this endorsement, paragraph (5)(B) reads: occurs to an air carrier (as defined in Section 40102 of title 49, United States Code) to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission],
 - (II) the premises of a United States mission, and
 - (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

ENDORSEMENT NO. 8 (Continued)

- (B) Limitation: No act shall be certified by the Secretary as an **act of terrorism** if:
- (i) The act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation, or
 - (ii) Property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.
- (C) Determinations Final: Any certification of, or determination not to certify, an act as an **act of terrorism** under this paragraph shall be final, and shall not be subject to judicial review.
- (D) Nondelegation: The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

All other terms, conditions and exclusions of the policy remain unchanged.



Authorized Representative
or countersignature (where required by law)

INSURED'S COPY